

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0328
Gross Income Tax
For the Years 1993, 1994, 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Corporate Income Tax- Indiana Source Income

Authority: IC 6-2.1-2-2(a)(2), IC 6-8.1-5-1, 45 IAC 1-1-29, 45 IAC 1-1-49(6).
Bethlehem Steel Corporation v. Indiana Department of Revenue, 597 NE2d 1327 (1992),
First National Leasing and Financial Corporation v. Indiana Department of Revenue, 598 NE2d 640 (1992).

The taxpayer protests the assessment of tax on gross income that the taxpayer contends was not Indiana source income.

STATEMENT OF FACTS

The taxpayer is a subsidiary of a life insurance company and files as a regular corporation for Indiana income tax purposes. The taxpayer leases washers, dryers and other appliances to various customers in Indiana. The taxpayer reported some of the leases as operating leases and others as financing leases. The taxpayer reported the total payments on the operating leases as subject to the high rate of gross income tax on the entire payment. On financing leases, the taxpayer reported the interest earned as being subject to the high rate of gross income tax, but did not report any of that portion of the payment made by the customer which was related to the principle. In an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed gross income tax on the portion of the receipts related to the repayment of principle on the financing leases. The taxpayer protested the assessment and a hearing was held.

I. Corporate Income Tax- Indiana Source Income

DISCUSSION

Pursuant to IC 6-2.1-2-2(a)(2), Indiana imposes a gross income tax on, "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is

not a resident or domiciliary of Indiana.” To be taxable under this statute, there must be gross income from a source within Indiana. 45 IAC 1-1-29, which was in effect at the time of the audit, clarifies that a taxpayer’s “. . . gross receipts derived from leasing real or personal property. . .” in Indiana are from a source in Indiana and subject to the gross income tax if the seller had business activity in Indiana. The business activities in the state, viewed as a whole, must be more than minimal to subject the activities to gross income taxation. Bethlehem Steel Corporation v. Indiana Department of Revenue, 597 NE2d 1327 (Tax Court 1992), First National Leasing and Financial Corporation v. Indiana Department of Revenue, 598 NE2d 640 (Tax Court 1992). The general rule is, then, that income derived from the lease of tangible personal property by a nonresident lessor to an Indiana lessee is subject to the gross income tax only if the seller had business activity in Indiana.

The taxpayer argues that it had no significant business activity subjecting it to Indiana taxation on the protested lease income. The taxpayer alleged that it did not maintain an office, warehouse, inventory or employees within Indiana. The taxpayer also alleged that it performed no services in Indiana and merely leased equipment that was already located in Indiana when purchased from unrelated third parties. The fact that the taxpayer was leasing property already located in Indiana indicates that the taxpayer was acquiring property in Indiana and then leasing it to Indiana customers. The leasing and rental of income-producing property establishes an Indiana business situs pursuant to 45 IAC 1-1-49(6) that states in pertinent part, “business situs” arises where there is “ownership, leasing, or other business activities connected with income-producing property(real or personal)” in Indiana. The taxpayer was engaging in an Indiana transaction and had an Indiana business situs subjecting it to Indiana gross income taxation.

Pursuant to IC 6-8.1-5-1, all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. The taxpayer did not supply any documentation supporting its contentions concerning its activities in Indiana, the leases or the tangible personal property leased in Indiana.

FINDING

The taxpayer’s protest is denied.